

ISSUE DATE: October 14, 1996

DOCKET NO. P-442/TC-95-419

ORDER REJECTING DIFFERENTIAL BETWEEN BASIC BUSINESS AND BASIC  
RESIDENTIAL RATES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Marshall Johnson  
Dee Knaak  
Mac McCollar  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Investigation into AT&T's  
Commercial Long Distance Service and  
Message Telecommunications Service Rate  
Structures

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**PROCEDURAL HISTORY**

On May 1, 1995 AT&T Communications of the Midwest, Inc. (AT&T or the Company) made a filing proposing to reduce its intrastate long distance rates across the board and to begin charging different basic rates to business and residential customers. Previously, basic rates for business and residential customers had been identical, although, as a practical matter, only businesses had the calling volume required for major volume discounts.

On June 23, 1995 the Department of Public Service (the Department) filed comments. The Department claimed the proposed business/residential rate differential violated the anti-discrimination provisions of the telecommunications carrier statute, Minn. Stat. § 237.74, and urged the Commission to reject it.

On July 13, 1995 the Company filed reply comments, arguing the rate differential was not unreasonably discriminatory and was explicitly permitted under the "market conditions" exception of Minn. Stat. § 237.74, subd. 3. On July 24, 1995 the Department filed final comments, continuing to oppose the rate differential.

The matter came before the Commission on September 24, 1996.

**FINDINGS AND CONCLUSIONS**

**I. The Legal Standard**

As a telecommunications carrier, AT&T is exempt from both rate regulation and rate of return regulation. Minn. Stat. §§ 237.01, subd. 6; 237.74, subd. 4. The Company is, however, subject to the anti-discrimination provisions of Minn. Stat. § 237.74, subds. 2 and 3, which read in part as follows:

Subd. 2. **Discrimination prohibited; practices, services, rates.** No telecommunications carrier shall offer telecommunications services within the state upon terms or rates that are unreasonably discriminatory. . . . A company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the state where it offers the services. However, a carrier may offer or provide volume or term discounts or may offer or provide unique pricing to certain customers or to certain geographic locations for special promotions, and may pass through any state, municipal, or local taxes in the specific geographic areas from which the taxes originate. . . .

Subd. 3. **Special Pricing.** Except as prohibited by this section, prices unique to a particular customer or group of customers may be allowed for services when differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers. Individual pricing for services may be allowed when a uniform price should not be required because of market conditions. Unique or individual prices for services or service elements in effect before August 1, 1993 are deemed to be lawful under this section.

Minn. Stat. § 237.74, subds. 2 and 3.

## **II. Positions of the Parties**

### **A. The Company**

The Company claimed the proposed rate differential was permissible under the market conditions exception of Minn. Stat. § 237.74, subd. 3, which permits prices unique to particular customers or groups of customers under specified circumstances. The Company claimed business customers present different market conditions by demanding different services and different prices than residential customers. The Company explained that it maintains separate business units for business and residential accounts.

The Company pointed out that business and residential customers have traditionally paid different local service rates, as a matter of Commission decision and policy. The Company argued the proposed rate differential passed muster under the reasoning of a 1990 Commission Order, the State Calling Services Order, permitting special rates for state and local governments.<sup>1</sup>

Finally, the Company cited thirteen alleged differences between the business and residential markets:

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<sup>1</sup> In the Matter of a Request by AT&T Communications of the Midwest, Inc. To Introduce Rates and Terms Related to the Provision of State Calling Service, Docket No. P-442/EM-90-245, ORDER APPROVING TARIFF FILING (September 13, 1990).

- The purposes of business and residential calls differ.
- Competitors for business and residential customers differ, since some competitors focus primarily on business customers.
- Business customers are more diverse than residential customers and require more diverse services.
- The characteristics of business and residential calls differ; business calls are shorter, involve shorter distances, and are heavily concentrated during work day hours.
- Business customers demand greater reliability and faster resolution of service problems.
- The Company's business and residential business units use different billing, provisioning, marketing, and customer inquiry facilities and practices.
- Specialized business services use different call rating standards than conventional business and residential services, charging flat rates regardless of distance, for example, or billing in smaller increments of time.
- Some of the costs of serving business and residential customers differ, especially marketing, billing, and customer inquiry costs.
- A higher proportion of business customers are located in urban areas.
- Business calls are tax-deductible; residential calls generally are not.
- The average business customer makes more calls than the average residential customer.
- The Federal Communications Commission (the FCC) classifies business and residential services differently for many purposes. The FCC has approved AT&T's proposed business/residential rate differential for interstate services.
- The FCC has approved business/residential rate differentials for the interstate services of other carriers.

## **B. The Department**

The Department claimed the proposed rate differential violated the anti-discrimination statute because it was not based on differences in the cost of service or other relevant differences between the two customer classes. The Department rejected the Company's claim that different market conditions justified the rate differential, saying the market conditions exception of Minn. Stat. § 237.74, subd. 3 applies only to individual customers.

The Department claimed the rate differential would discriminate between similarly situated customers, because AT&T has not developed its own definition of "business customer," but instead applies the classification assigned by the customer's local exchange carrier. Finally, the Department argued the reasoning of the State Calling Services Order does not apply, since that case was decided before the statutes at issue were enacted.

## **III. Commission Action**

The Commission will reject the proposed rate differential as unreasonably discriminatory, for the reasons set forth below.

### **A. Market Conditions Exception Does Not Apply**

The Company's main argument is that the rate differential is justified by market conditions and

is therefore permissible under Minn. Stat. § 237.74, subd. 3. The Commission disagrees. The market conditions exception of subdivision 3 clearly applies only to individual customers, not groups of customers.

Subdivision 3 also authorizes special pricing for groups of customers, but only upon a showing of differences in the cost of providing service. Since the Company has shown no difference in the cost of providing service to business and residential customers, subdivision 3 does not support or permit the proposed rate differential.

### **B. 1990 Order Does Not Apply**

The Commission agrees with the Department that the 1990 Order cited by the Company does not control or apply in this case. That Order, which approved special rates for state and local governments, was decided under different statutes, before the telecommunications carrier statute, Minn. Stat. § 237.74, became law.<sup>2</sup> Here, the telecommunications carrier statute is directly applicable. It is therefore unnecessary to analyze the proposed rate differential under the 1990 Order.

### **C. Other Factors Do Not Justify Proposed Rate Differential**

The Company pointed out that the statute prohibits only *unreasonable* discrimination and argued that the differences between residential and business customers are significant enough to make discrimination between them reasonable. The Commission disagrees.

First, it is important to note that rate discrimination is the one rate issue the Legislature, in enacting the telecommunications carrier statute, did not leave to the marketplace to resolve. The statute is a major milestone on the road to a fully competitive telecommunications environment. It freed most long distance carriers from rate regulation, streamlined their rate change procedures, and eliminated ceilings on their earnings. It was basically designed to allow market forces to replace regulation as the primary tool for promoting efficiency and keeping rates low.

When it came to rate discrimination, however, the Legislature expressed deep concern, established detailed guidelines, and required continuing Commission oversight. From this the Commission concludes it should not lightly find rate discrimination reasonable.

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<sup>2</sup> The decision's continuing legitimacy is assured by the final sentence of subdivision 3: "Unique or individual prices for services or service elements in effect before August 1, 1993 are deemed to be lawful under this section."

In this case there is no evidence that differences in the cost of serving business and residential customers justify discriminating between them. There is no compelling public policy reason for discriminating between them. There is no statutory basis for discriminating between them.

As noted above, the Company listed thirteen ways in which the residential and business segments of the long distance market differ. None of the thirteen differences noted offer clear justification for a rate differential, however, and many appear to cut in favor of rate parity or lower residential rates.

Some, like the fact that the purposes of residential and business calls differ, seem irrelevant to pricing. Others, like the fact that business calls are tax-deductible while residential calls are not, suggest a need for lower residential rates. One, the fact that more business customers are located in cities, violates the spirit if not the letter of Minnesota's longstanding prohibition against geographic deaveraging.<sup>3</sup> Another, the allegation that business customers demand (and the implication that they receive) more reliable service and faster repairs raises serious discrimination issues of its own.

In short, the Company does not allege, let alone prove, any traditional basis for the rate discrimination it proposes. It does not argue that lower business rates are necessary to reflect lower costs, to meet lower-priced competition, or to serve important public policy goals. (The term and volume discounts already permitted by statute apparently allow the Company to do these things.) Neither does the Company advance any convincing new basis for the rate discrimination it proposes.

#### **D. Local and Interstate Rate Differentials Are Not Dispositive**

Finally, the Company pointed out that most local exchange carriers have different basic rates for business and residential customers and that the FCC has approved different business and residential rates for interstate calls. Local service and interstate service involve different legal and policy considerations than intrastate long distance service, however.

Local rates have long been structured to promote state universal service policies, for example, and interstate rates are determined in accordance with federal law and policy. Intrastate long distance rates are subject to the public policy considerations of Minnesota's telecommunications carrier statute, chief of which is the prohibition against unreasonable discrimination.

#### **IV. Conclusion**

The telecommunications carrier statute bars unreasonable discrimination between customers and between groups of customers. The Company has failed to allege or prove a reasonable basis for discriminating between business and residential customers in basic rates.

For all the reasons set forth above, the Commission concludes that the proposed rate

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<sup>3</sup> Minn. Stat. § 237.74, subd. 2.

differential violates the anti-discrimination provisions of Minn. Stat. § 237.74. The Commission will therefore reject the proposal and require the Company to file new price lists charging the same basic rates for business and residential service.

### **ORDER**

1. The Commission finds that the rate schedules filed by AT&T on May 1, 1995 unreasonably discriminate between business and residential customers by charging these two customer groups different basic rates.
2. Within 30 days of the date of this Order AT&T shall file new rate schedules charging the same basic rates to residential and business customers.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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